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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ O.M.P. (COMM) 42/2019

SPICEJET LIMITED

.....Petitioner

Through: Amit Sibal Sr. Adv, K.R. Sasiprabhu,
Goutham Shivshankar, Ms. Chinmayi
Chatterjee, Yashrath Misra, Vinamra,
Adv.

versus

KAL AIRWAYS PVT LTD & ORS.

.....Respondents

Through: Mr. Jayant Mehta, Sr. Adv., Ms.
Nandini Gore, Adv., Ms. Sonia
Nigam, Adv., Ms. Swati Bhardwaj,
Adv., Mr. Akarsh Sharma, Adv.

(24)

+ O.M.P. (COMM) 43/2019

AJAY SINGH

.....Petitioner

Through: Amit Sibal Sr. Adv, K.R. Sasiprabhu,
Goutham Shivshankar, Ms. Chinmayi
Chatterjee, Yashrath Misra, Vinamra,
Adv.

versus

KAL AIRWAYS PVT LTD & ORS.

.....Respondents

Through: Mr. Jayant Mehta, Sr. Adv., Ms.
Nandini Gore, Adv., Ms. Sonia
Nigam, Adv., Ms. Swati Bhardwaj,
Adv., Mr. Akarsh Sharma, Adv.

(25)

+ OMP (ENF.) (COMM.) 31/2019



KAL AIRWAYS PVT. LTD.

.....Decree Holder

Through: Mr. Jayant Mehta, Sr. Adv., Ms. Nandini Gore, Adv., Ms. Sonia Nigam, Adv., Ms. Swati Bhardwaj, Adv., Mr. Akarsh Sharma, Adv.

versus

M/S SPICEJET LTD. & ANR.

.....Judgement Debtors

Through: Amit Sibal Sr. Adv, K.R. Sasiprabhu, Goutham Shivshankar, Ms. Chinmayi Chatterjee, Yashrath Misra, Vinamra, Adv.

(26)

+ OMP (ENF.) (COMM.) 32/2019

MR. KALANITHI MARAN

.....Decree Holder

Through: Mr. Jayant Mehta, Sr. Adv., Ms. Nandini Gore, Adv., Ms. Sonia Nigam, Adv., Ms. Swati Bhardwaj, Adv., Mr. Akarsh Sharma, Adv.

versus

M/S SPICEJET LTD. & ANR.

.....Judgement Debtors

Through: Amit Sibal Sr. Adv, K.R. Sasiprabhu, Goutham Shivshankar, Ms. Chinmayi Chatterjee, Yashrath Misra, Vinamra, Adv.

CORAM:

HON'BLE MR. JUSTICE SUBRAMONIUM PRASAD

ORDER

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19.01.2026

I.A. 1281/2019 in O.M.P. (COMM) 42/2019



I.A. 1286/2019 in O.M.P. (COMM) 43/2019

1. These Applications have been filed by the Petitioners/Judgment Debtors seeking stay of the Award dated 20.09.2018, as corrected/modified vide Award dated 20.09.2018 passed by the learned Arbitral Tribunal [*collectively referred to as “the Arbitral Award”*].

2. The brief facts, which are necessary for passing Orders in these Applications, are as under:

- (i) KAL Airways Private Limited and Mr. Kalanithi Maran [*“the Decree Holders/Respondents”*] were the promoters and majority shareholders of SpiceJet Limited [*“Judgment Debtor No.1”*] holding 58.46% therein.
- (ii) In 2013, the Judgment Debtor No. 1 began facing acute financial distress and imminent cessation of operations and in order to ensure continuity of operations, the Decree Holders/Respondents issued an Offer Letter dated 13.01.2015, proposing transfer of their entire shareholding to Mr. Ajay Singh [*“Judgment Debtor No.2”*] for a nominal consideration of ₹2/-, coupled with an arrangement for infusion of committed financial support aggregating to ₹450 crores. Pursuant thereto, the parties entered into the Share Sale and Purchase Agreement dated 29.01.2015 [*“SSPA”*], which contemplated transfer of shares, issuance of warrants and non-Convertible Redeemable Cumulative Preference Shares [*“CRPS”*], and release of personal guarantees and securities furnished by the Decree Holders/Respondents.



- (iii) Under the contractual framework, the CRPS was structured as a debt instrument redeemable only after expiry of a period of eight years and subject to the terms stipulated in the SSPA.
- (iv) It is stated that disputes arose between the parties regarding performance of reciprocal obligations under the SSPA.

3. It is the case of the Respondents/Decree Holders that since the Petitioners/Judgment Debtors failed to comply with their obligations under the SSPA, the Respondents/Decree Holders approached this Court by filing Petitions, being OMP (I) COMM. 71/2016 & OMP (I) COMM 72/2016 under Section 9 of the Arbitration and Conciliation Act, 1996 [“*Arbitration Act*”], seeking interim reliefs. It is stated that both the said Petitions were disposed of *vide* Order dated 29.07.2016, wherein this Court directed the Petitioners/Judgment Debtors to deposit a sum of INR 579 crores with this Court, being the value paid by the Respondents/Decree Holders towards the value of warrants and CRPS.

4. It is stated that the Order dated 29.07.2016, was challenged by the Petitioners/Judgment Debtors by way of appeals under Section 37 of the Arbitration Act being FAO(OS)(COMM) No.61/2016 & 62/2016 before the Division Bench of this Court. *Vide* order dated 03.07.2017, the Division Bench dismissed the Appeals. However, the Division Bench modified the direction passed by the Single Judge *vide* Order dated 29.07.2016, to the extent that Petitioners/Judgment Debtors were permitted to furnish Bank Guarantee of INR 329 crores and for the balance amount of INR 250 crores, the Petitioners/Judgment Debtors were directed to deposit the same in cash.

5. It is stated that the Order dated 03.07.2017 was challenged by the Petitioners/Judgment Debtors by way of Special Leave Petitions (Civil)



No.18558/2017 & 18645/2017 before the Apex Court, which came to be dismissed *vide* Order dated 03.07.2018.

6. Subsequently, for adjudication of disputes, arbitration was invoked and a three-member Arbitral Tribunal was constituted on 29.09.2016 in terms of the arbitration agreement contained in the SSPA. Upon completion of pleadings and hearings, the learned Arbitral Tribunal rendered its Award dated 20.07.2018 by directing Petitioners/Judgment Debtors to pay the sum of INR 308,21,89,461/- to the Respondents/Decree Holders along with pre-award and *pendente lie* interest @ 12% p.a. w.e.f. 01.11.2015 within two months. Relevant extract of the Award dated 20.07.2018 is as under:

“In conclusion, we hold as follows:-

- (1) The Claimants are entitled to refund of Rs.308,21,89.461/- from the Respondents.*
- (2) The parties shall explore the possibility of giving effect to and exercise the option as described in detail. In case the efforts do not fortify, the Respondents shall within a period of one month thereafter refund the amount in question, i.e., Rs. 270,86,99,209/- to the Claimant No. 2 (which is arrived at after adjusting the counter claim of Rs. 100 crores which has been allowed).*
- (3) Since the amount covered by conclusion (1) was with the Respondents since November 2015, they would have become liable to pay interest on the same. Though, interest at the rate of 18% per annum has been claimed, we are of the view that since Respondent No. 1 Company took over a huge liability and also paid interest on the tax amount payable by the Claimants, interest at the rate of 12% on Rs. 308,21,89,461/- would be appropriate. The amount has to be*



accordingly calculated for about 30 months. Additionally, in view of the finding relating to the CRPS claim and the proved position that the Respondents have paid interest/servicing charges of around Rs. 29 crores, the counter claim to that extent is allowed.

- (4) *So far as the costs are concerned, in view of the factual scenario involved, both parties are directed to bear their respective costs. The Cost of Arbitration (fee of Arbitrators, expenses including travel, hotel expenses etc. of the Arbitrators, venue and Secretarial assistance) shall be borne equally by the parties.*
- (5) *In case the payments, as directed, to be made by the Respondents are not so made within two months from the relevant, the Claimants shall be entitled to interest @ 18% from the last date of the due date in terms of this Award.*
- (6) *Claims/counter claims other than those dealt with above and specifically granted stand rejected.”*

7. The above Award dated 20.07.2018 was corrected and modified by the learned Arbitral Tribunal vide Order dated 20.09.2018 on an application filed by the Petitioners/Judgment Debtors under Section 33 of the Arbitration Act.

8. Aggrieved by the Arbitral Award to the extent it allowed the counter claim of the Petitioners/Judgment Debtors, the Respondents/Decree Holders filed Petitions under Section 34 of the Arbitration Act, being OMP (COMM) 450/2018 & OMP (COMM) 451/2018 before this Court.

9. The Petitioners/Judgment Debtors also challenged the Award by filing Petitions under Section 34 of the Arbitration Act, being OMP (COMM)



42/2019 & OMP (COMM) 43/2019, before this Court, to the extent of grant of claims in favor of the Respondents/Decree Holders. It is pertinent to mention that no stay on the enforcement of the Arbitral Award was granted by this Court in any of the proceedings under Section 34 of the Arbitration.

10. During the pendency of the petitions under Section 34 of the Arbitration Act, the Respondents/Decree Holders initiated enforcement proceedings under Section 36 of the Arbitration Act by filing OMP(ENF.)(COMM) 31/2019 & OMP(ENF.)(COMM) 32/2019 [***“Enforcement Petitions”***] before this Court. In the Enforcement Petitions, this Court *vide* Order dated 25.03.2019, directed the Registry of this Court to release a sum of INR 250 crores in favour of the Respondents/Decree Holders and directed the parties to explore the possibility of an amicable settlement.

11. Further, *vide* Order dated 20.09.2019, this Court disposed of the Enforcement Petitions by holding as under:

“1. The decree holder has already received Rs. 250 crores from the judgment debtors. The decree holder seek release of further amount of Rs. 58,21,89,461/- from the judgment debtors.

2. YES Bank has issued bank guarantee No.066GM03172550001 dated 12th September, 2017 extended/renewed on 23rd May, 2019 for Rs.329,00,00,000/- (Rupees three hundred twenty nine crores) valid up to 11th December, 2019 in favour of the Registrar General of this Court.

3. YES Bank, Kapashera Branch is directed to:- (i) Amend the bank guarantee for Rs. 329,00,00,000/- (Rupees three hundred twenty nine crores) by reducing the bank guarantee amount to Rs.270,78,10,539/-



(Rs.329,00,00,000 – Rs.58,21,89,461); and (ii) Make the payment of Rs.58,21,89,461/- to the decree holders, by transferring the same to account No.036001000120232 of Mr. Kalanithi Maran, City Union Bank, Mandaveli Branch (IFSC Code: CIUB0000036) within a period of two weeks.

4. Learned counsels for the parties submit that the letter of the YES Bank Limited containing the amendment would be sufficient compliance of para 3(i) above. In that view of the matter, YES Bank Limited is directed to send the letter containing the amendment to the Registrar General of this Court.

5. These petitions are disposed of with liberty to the petitioner to file fresh petition after the decision on the objections under Section 34 of the Arbitration and Conciliation Act.

6. Learned senior counsel for the decree holder submits that in the event of any subsequent development with respect to the status of the judgment debtor, they shall approach this Court. The decree holders are at liberty to do so.

7. It is clarified that the amount of Rs.250 crores already released to the decree holders as well as amount directed to be released today are subject to outcome of the objections filed by both the parties to the award and if the decree holders are held liable to refund any amount, they shall refund the same with interest at such rate as directed by the Court.

8. Copy of this order be given dasti to counsels for the parties under signature of Court Master.”

(emphasis supplied)

12. Material on record indicates that the Respondents/Decree Holders



once again approached this Court by filing applications being E.A. 679/2019 & E.A. 680/2019, seeking a direction to the Petitioners/Judgment Debtors to deposit the interest component of the awarded sum, with a further direction for deposit of up-to-date interest on the entire awarded sum. In the said Applications, the Respondents/Decree Holders also sought for an additional prayer to restrain the Petitioners/Judgment Debtors from allotting, transferring, issuing, alienating and/or pledging and/or creating any third-party interest(s) and/or encumbrance over any of the promoter shares of the Judgment Debtor No.1 Company.

13. Notice in both E.A. 679/2019 & E.A. 680/2019 was issued on 15.10.2019 and the Applications were tagged with Section 34 Petitions, which were pending before this Court. *Vide* Order dated 02.09.2020, this Court disposed of the said Applications by passing the following Order:

“23. In the light of these facts, it is clear that the DHs have not preferred any fresh enforcement petition, but have instead sought only a revival of the enforcement petition, strictly in accordance with the liberty granted by this Court. The fact remains that Audit report dated 29.01.2020 was not placed on record in September 2019, thus it was neither relied upon by either of the parties nor considered by this Court at the time of disposing of the petitions and the applications. Undoubtedly, the auditor has opined that as on date, the JD No.1 is a loss making concern and has also expressed doubts on its ability to revive its financial health, which is a grim diagnosis for the JD No.1 Company. The DHs have contended, and in my view rightly so, that these circumstances constitute a ‘subsequent development in the status of the JD’. Thus, when this Court specifically granted the DHs the liberty to bring up the matter in such a situation, neither can the present applications be deemed as



seeking review of the order dated 20.09.2019 nor can they be barred by the doctrine of red judicata. I, therefore, find that these applications strictly fall within the purview of the liberty granted by this Court.

30. Resultantly, the applications are allowed by directing the JDs to deposit a sum of INR 242,93,70,845.56/- within a period of 6 weeks, which amount comprises of the following components:-

i. INR 100,62,29,304.58/-

ii. INR 44,53,38,232/- and

iii. INR 97,78,03,308.98/-

31. Needless to say, this deposit will be subject to any final orders passed in the present petition and would also be subject to any orders passed in the pending challenge OMP (Comm) 450/2018, 451/2018, 42/2019 and 43/2019. In the event the amount is not deposited by the JDs within the time granted, the DHs shall be at liberty to revive their prayer seeking directions to the JDs to maintain status quo with respect to their shareholding.”

14. The Order dated 02.09.2020 was challenged by the Petitioners/Judgment Debtors by filing SLP (C) Nos. 12834-12835/2020 and 12882-12883/2020 before the Apex Court. The SLPs were allowed and were converted into Civil Appeal Nos.1064-65/2023 and 1066-67/2023. The said Civil Appeals were disposed of by the Apex Court *vide* Order dated 13.02.2023 with the following directions:

“15 Hence, we direct as follows :

(i) The bank guarantee shall be encashed immediately



and the proceeds shall be payable to the respondent-decree holder within two weeks. This will ensure that quantum of the principal sum due in the award is paid over in its entirety;

(ii) The appellant shall, within a period of three months, pay an amount of Rs 75 crores to the respondent towards the liability on account of interest pending the disposal of the petition under Section 34;

(iii) In the event that the appellant defaults in complying with the above direction for payment or any part thereof, the award shall become executable forthwith in its entirety.”

15. It is stated that since the above directions were not complied with, the Petitioners/Judgment Debtors filed Applications being Miscellaneous Application Nos.1485-86/2023 before the Apex Court, seeking extension of time for compliance. The said Applications were dismissed by the Apex Court *vide* Order dated 07.07.2023 by holding as under:

“1. The order of this Court dated 13 February 2023 provides a self-operative consequence of the award becoming executable if compliance is not effected.

2. This is a breach in complying with the order. No further extension of time can be granted. The award shall become executable in terms of the order.

3. The Miscellaneous Applications are accordingly dismissed.

4. Pending applications, if any, stand disposed of.”
(emphasis supplied)

16. This Court notes that the Orders passed by the Apex Court have yet



not been complied with by the Petitioners/Judgment Debtors.

17. It is further pertinent to note that the Petitioners/Judgment Debtors also filed E.A. No.1283/2023 & 1284/2023 in OMP (ENF.) (COMM) 32/2019 & OMP (ENF.) (COMM) 31/2019 respectively, which *inter alia* contained the below averment with the following averments:

“6. The Applicant submits that various orders have been passed by this Hon’ble Court and the Hon’ble Supreme Court in relation to the payments to be made under the Award. The gist of such Orders have been summarized at paragraph 23 hereinbelow. Pursuant to such Orders, the Judgment Debtors have thus far paid a sum of Rs. 579 Crore towards return of the entire principal, and an amount of Rs.100,00,00,000/- towards interest. Without prejudice to its rights and contentions, the Applicant submits that if interest is properly calculated as per the terms of the Award, only Rs. 294,51,69,887 towards interest is payable and after adjustment of Rs.100 Crore already paid, the amount remaining payable is Rs.194,51,69,887 only.”
(emphasis supplied)

18. It is stated by the Respondents/Decree Holders that out of INR 194,51,69,887/- only an amount of INR 50 crores have been paid in two tranches and therefore, admittedly an amount INR 144,51,69,887/- is still due and payable. It is, therefore, stated that the said amount must be directed to be deposited by the Judgment Debtors. He states that the Judgment Debtors are flouting the Orders of the Apex Court which cannot be permitted.

19. Before parting with the instant Order and passing directions, this Court also deems it fit to recall certain further factual matrix, most of which revolves around the directions issued by this Court to the



Petitioners/Judgment Debtors.

20. It is noted that the Petitions under Section 34 of the Arbitration Act, being O.M.P. (COMM) 450/2018 & O.M.P. (COMM) 451/2018, filed by the Respondents/Decree Holders were dismissed by a learned Single Judge of this Court *vide* Order dated 31.07.2023. The said Order was challenged by the Petitioners/Judgment Debtors by filing FAO(OS) (COMM) 179/2023 & FAO(OS) (COMM) 180/2023 before the Division Bench of this Court. The Division Bench of this Court *vide* Judgment dated 17.05.2024, allowed the said Appeals and remanded the matter back to the learned Single Judge for fresh consideration. This Judgment pronounced by the Division Bench was the subject matter of challenge by the Respondents/Decree Holders before the Apex Court in SLP (C) Nos. 14936/2024 and 14741/2024, which came to be dismissed on 26.07.2024.

21. The Order dated 31.07.2023 was also challenged by the Respondents/Decree Holders before the Division Bench of this Court in FAO (OS) (COMM) Nos.173 & 171 of 2024. This also came to be dismissed *vide* Judgment dated 23.05.2025 passed by the Division Bench. This Judgment of the Division Bench was assailed before the Apex Court in SLP (C) Nos. 17270/2025 and 17306/2025, which also came to be dismissed *vide* on 23.07.2025.

22. As the relevant factual matrix has been appreciated, this Court shall now deal with the rival contentions advanced on behalf of the parties herein.

23. In the present Applications filed on behalf of the Petitioners/Judgment Debtors seeking a stay on the enforcement of the Arbitral Award, it is the contention of the learned Senior Counsel appearing for the Respondents/Decree Holders that the Orders of the Apex Court have yet not



been complied with, despite of nearly three years having elapsed since directions were given.

24. Attention of this Court has been drawn to the Order dated 24.07.2023, wherein this Court had observed that on 29.05.2023 a direction was given to the Petitioners/Judgment Debtors to file their affidavit of assets under Order 21 Rule 41(2) Code of Civil Procedure, 1908 [“*CPC*”]. This has yet not been complied with by the Petitioners/Judgment Debtors. He further states that on 09.08.2023. this Court again noted that despite various orders *qua* deposit of decretal amount before this Court, the Petitioners/Judgment Debtors has not complied with any of such orders.

25. Attention of this Court has also been drawn to the Order dated 05.02.2024 wherein the Petitioners/Judgment Debtors were directed to deposit INR 50 crores. He states that this direction is complied with and now INR 144,51,69,887/- is due and payable as per the Orders of the Apex Court. He states that since the amount of INR 194,51,69,887/- has been admitted to be due and payable, the Judgment Debtors should, at least, deposit this amount in Court and the amount must be secured.

26. *Per contra*, learned Senior Counsel appearing for the Petitioners/Judgment Debtors contends that the Applications seeking stay on the Arbitral Award are still pending and the Orders passed in the Enforcement Petitioners are subject to the outcome of the Section 34 Petitions, which are still adjudication.

27. Heard the learned Senior Counsels and perused the material on record.

28. The facts narrated above make it clear that the Orders passed by the Apex Court on 13.02.2023 & 07.07.2023 have yet not been complied with



by the Petitioners/Judgment Debtors.

29. Reference is made to Article 144 of the Constitution of India which mandates all authorities – civil and judicial, to act in aid of the Apex Court. Accordingly, this Court is of the opinion that Orders passed by the Apex Court cannot be left in a limbo, more so for nearly three years after they have been passed.

30. The Petitioners/Judgments Debtors are in continuous non-compliance of the Orders passed by the Apex Court as well as this Court.

31. As such, the contention of the learned Senior Counsel for the Petitioners/Judgment Debtors that the Orders of the executing Court would be subject to the Orders passed in the pending Section 34 Petitions cannot be accepted and, therefore, the contention that the Petitioners/Judgment Debtors need not be asked to deposit the decretal amount, also cannot be accepted.

32. Furthermore, as noted above, the Petitioners/Judgment Debtors have themselves in E.A. No.1283/2023 & 1284/2023 filed in OMP (ENF.) (COMM) 32/2019 & OMP (ENF.) (COMM) 31/2019, categorically admitted that INR 194,51,69,887/- is due and payable. Since INR 50 crores have already been deposited by the Petitioners/Judgment Debtors, now INR 144,51,69,887/- is admittedly due and payable in compliance of the Orders of the Apex Court. Even though a larger amount is further due and payable as per the Orders of the Apex Court, for the time being, the Petitioners/Judgment Debtors are directed to deposit the amount of INR 144,51,69,887/- with the Registry of this Court within six weeks from the date of upload of this Order.

33. List on 18.07.2026.



O.M.P. (COMM) 42/2019, I.A. 1284/2019

O.M.P. (COMM) 43/2019, I.A. 1289/2019

EX.APPL.(OS) 679/2019, EX.APPL.(OS) 1054/2020, EX.APPL.(OS) 937/2023, EX.APPL.(OS) 1284/2023, EX.APPL.(OS) 1501/2023, EX.APPL.(OS) 34/2024, I.A. 6946/2019 in OMP (ENF.) (COMM.) 31/2019

EX.APPL.(OS) 680/2019, EX.APPL.(OS) 749/2020, EX.APPL.(OS) 750/2020, EX.APPL.(OS) 751/2020, EX.APPL.(OS) 1053/2020, EX.APPL.(OS) 938/2023, EX.APPL.(OS) 1283/2023, EX.APPL.(OS) 36/2024, EX.APPL.(OS) 42/2024, I.A. 6947/2019 in OMP (ENF.) (COMM.) 32/2019

34. List on 18.07.2026 for final hearing.

SUBRAMONIUM PRASAD, J

JANUARY 19, 2026

Rahul/AP